IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3875 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH CHAUDHARY BHIKHARI CHAUDHARY

Versus

STATE OF GUJARAT, THROUGH SECRETARY

Appearance:

MR MM TIRMIZI for Petitioner

MR SJ DAVE, AGP for respondent No.1-State.

RULE SERVED for Respondent No. 2, & 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 29-1-2000, passed by

the Police Commissioner, Surat,and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of publoic order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner has restricted his arguments only on the point that there is delay in deciding the representation. Learned counsel for the petitioner has argued that the petitioner sent first representation on 10-3-2000 and demanded certain documents, but the same are not received by the petitioner till today. Learned A.G.P. after going through the file submitted that the representation dated 10-3-2000 has been decided on 15-3-2000, however, on going through the record it appears that the documents demanded by the petitioner have not been supplied to the petitioner. The petitioner sent second representation on 14-3-2000. Learned A.G.P. Mr. S.J.Dave after going through the file has submitted that representation dated 14-3-2000 been decided by the authority on 24-4-2000. Therefore, there is delay of more than one month in deciding the representation for which learned counsel for the petitioner has relied upon a decision reported in upon a decision reported in AIR 1999 SC 884 Rajanmal v. State of Tamil Nadu and another ,wherein it is held as under ;

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. "

4. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 29-1-2000 passed against the detenu is hereby quashed. The detenu Rajesh Chaudhary Bhikhari Chaudhary is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute

with no order as to costs.

(R.P.Dholakia, J.)

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